

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 1.937 of the)	WT Docket No.02-87
Commission=s Rules Concerning Repetitious)	
Or Conflicting Applications)	
)	

To: The Commission

**COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. (“AMTA” or “Association”), by its attorneys and in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.¹ AMTA supports the Commission=s continued effort to simplify its rules for the Wireless Radio Services, but urges careful application of the revised rule.

I. INTRODUCTION

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association’s members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio (“SMR”) operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. Collectively, these members file thousands of applications on a routine basis. Thus, the Association and its members have a significant interest in the outcome of this proceeding.

¹ *Notice of Proposed Rule Making*, WT Docket No. 02-87, FCC 02-83 (rel. Mar. 20, 2002) (“Notice”).

II. COMMENTS

The instant Notice proposes to amend FCC Rule Section 1.937 to prohibit the filing of any repetitious license application in the Wireless Radio Services within twelve months of the denial or dismissal with prejudice of a substantially similar application and to combine Sections 1.937(a) and (b) into one rule.

AMTA supports the FCC's efforts to simplify and clarify its rules, but urges the Commission to do so carefully. The proposed revised rule is applicable to those instances "[w]here the Commission has, for any reason, dismissed with prejudice or denied any license application in the Wireless Radio Services, or revoked any such license".²

Rule Section 1.934 gives the Commission discretion to dismiss any incomplete or defective application without prejudice.³ For example, applications may be dismissed without prejudice for failure of the applicant to prosecute, because the application is defective, because the requested spectrum is not available or because the application is untimely.⁴ The Commission's form notice for such dismissed applications is clear that the dismissal is without prejudice.⁵

AMTA's concern is with respect to denied applications. The rule does not propose to prevent the re-filing of only those applications denied with prejudice, but all denied applications.

² Notice, Appendix A, Proposed Rule.

³ 47 C.F.R. ' 1.934.

⁴ *Id.*

⁵ See Exhibit 1 for sample Form 699.

There is no rule comparable to 1.934 which distinguishes between different types of denied applications. If the Commission adopts revised Rule §1.937, AMTA urges the Commission to convey to its staff the crucial importance of distinguishing between dismissals and denials in disposing of routine applications under their consideration.

III. CONCLUSION

For the reasons described above, AMTA recommends that the FCC proceed promptly to act in a manner consistent with the positions expressed herein.

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

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May 29, 2002

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, Chartered, hereby certify that I have on this May 29, 2002 caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

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